

## **REMARKS**

This paper is presented in response to the Final Office Action. By this paper, claims 36-44 and 54 are canceled. Claims 1-35 were canceled in a previous paper and claims 48-53, 56, and 57 were withdrawn in another previous paper. As such, claims 45-47 and 55 are now pending in the application.

Reconsideration of the application is respectfully requested in view of the aforementioned amendments and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Final Office Action.

Inasmuch as this paper does not touch the merits of this case, but simply cancels the rejected claims 36-44 and 54, thereby leaving only allowable claims pending, consideration and entry of this paper is proper pursuant to 37 C.F.R. § 1.116.

### **I. General Considerations**

#### **a. claim amendments and cancellations**

With particular reference to the claim amendments, Applicant notes that while claims 36-44 and 54 have been canceled herein, such cancellations have been made in the interest of expediting the allowance of this case. Notwithstanding, Applicant, may, on further consideration, determine that claims of broader scope than those now presented are supported. Accordingly, Applicant hereby reserves the right to file one or more continuing applications with claims broader in scope than the claims now presented.

Consistent with the points set forth above, Applicant submits that neither the claim cancellations set forth herein, nor any other claim amendments, claim cancellations or statements advanced by the Applicant in this or any related case, constitute or should be construed as, an implicit or explicit surrender or disclaimer of claim scope with respect to the cited, or any other, references.

#### **b. remarks**

Applicant respectfully notes that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the patentable distinctions between any cited references and the invention, example embodiments of which are set forth in the claims of this

application. Rather, and in consideration of the fact that various factors make it impractical to enumerate all the patentable distinctions between the invention and the cited art, as well as the fact that the Applicant has broad discretion in terms of the identification and consideration of the base(s) upon which the claims distinguish over the cited references, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration by the Applicant, in this case or any other, of: additional or alternative distinctions between the invention and the cited references; and/or, the merits of additional or alternative arguments.

## **II. Rejection of Claims 36-44 and 54 under 35 U.S.C. § 103**

The Examiner has rejected claims 36-44 and 54 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,571,191 to York et al. ("*York*") in view of U.S. Patent No. 6,144,112 to Gilmore ("*Gilmore*"). Applicant disagrees but submits that in view of the cancellation herein of claims 36-44 and 54, the rejection is moot and should be withdrawn.

## **III. Comments on Statement of Reasons for Allowance**

Applicant acknowledges with thanks the indication of the Examiner that claims 45-47 and 55 are allowed, and Applicant also wishes to thank the Examiner for the careful review of those claims.

Applicant submits the following comments concerning the Examiner's statements of reasons for the indication of allowable subject matter in the Office Action. In general, Applicant agrees with the Examiner that the inventions to which claims 45-47 and 55 are directed are patentable over the cited references, but respectfully disagrees with the Examiner's statement of reasons for allowance as set forth in the Office Action.

Particularly, Applicant submits that it is improper to characterize a single limitation, or subset of limitations, as constituting the basis for allowance of a claim. Rather, the patentability of a claim is properly determined with reference to the claim *as a whole*. Accordingly, Applicant does not concede that the reasons for allowable subject matter given by the Examiner are the only reasons that make, or would make, claims 45-47 and 55 allowable and Applicant does not

make any admission or concession concerning the Examiner's statements in the Office Action concerning the allowability of claims 45-47 and 55 in view of the cited references.

**IV. Rejoinder of Claims 48-53, 56, and 57 Under 37 C.F.R. § 1.141(a)**

Applicant respectfully submits that previously withdrawn claims 48-53, 56 and 57 should be rejoined in view of the allowance of generic claims 45-47 and 55. Particularly, the Examiner previously noted that claims 45-47 and 55 were generic to the following species: I – claims 36-44 and 54; and, II – claims 48-53 and 56-57. See *Restriction Requirement* mailed 7 February 2008 at 2. Accordingly, Applicant respectfully submits that withdrawal of the Election of Species requirement (see *Id.*) and rejoinder of claims 48-53, 56 and 57 is proper.

**V. Fee Payment**

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to **Deposit Account No. 23-3178**: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 § CFR 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to **Deposit Account No. 23-3178**.

### **CONCLUSION**

In view of the foregoing, Applicant respectfully submits that each of the claims 45-47 and 55 now pending in this application, as well as each of the withdrawn claims 48-53, 56, and 57, is in condition for allowance. Therefore, allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 29th day September, 2008.

Respectfully submitted,

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